# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 189.

GEORGE SEITZ AND MARY E. SEITZ, APPELLANTS,

vs.

JOHN T. MITCHELL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED OCTOBER 17, 1874.**

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1 *Bill of complaint.—Filed Novr. 6th, 1872.*

In the supreme court of the District of Columbia, the 6th day of November, A. D. 1872.

JOHN T. MITCHELL, SURVIVING PARTNER OF Harper & Mitchell,
*vs.*
GEORGE SEITZ, MARY ELIZABETH SEITZ, John W. Kennedy, William B. Todd, jr., Edward M. Nourse, John E. Kendall, and the Arlington Fire-Insurance Company of the District of Columbia.
No. 2973. Equity docket 12.

In the supreme court of the District of Columbia, holding an equity court for said District.

The bill of complaint of the above-named plaintiff respectfully sheweth unto your honors—

1st. That he is a citizen of the said District, and files this bill in his own right, as surviving partner of the firm of Harper and
2 Mitchell, and as a judgment creditor of the defendant, George Seitz, both in his own behalf and in that of all others similarly situated who may by proper proceedings be made parties hereto, and who shall contribute their proportionate share towards the expenses of this suit.

2d. That all of said defendants are citizens of the said District, and that of said defendants George Seitz, Mary Elizabeth Seitz, John E. Kendall, and the Arlington Fire-Insurance Company are sued in their own right; and the said Mary E. Seitz is also sued as the wife of George Seitz, and the defendants John W. Kennedy, William B. Todd, jr., and Edward M. Nourse are sued as trustees under certain deeds of trust hereinafter more specifically referred to; and further that the said Arlington Fire-Insurance Company is a corporation by virtue of an act of Congress.

3d. That the said firm of Harper and Mitchell, composed of
3 Walter Harper, now deceased, and the plaintiff, did on the 9th day of June, A. D. 1868, recover judgment on the law side of your hon. court in a suit therein pending, numbered 4748, wherein the said Harper & Mitchell were plaintiffs and *the defendant* George Seitz defendant, against the said George Seitz for the sum of $1,635.50, with interest thereon according to the terms of said judgment and $20.30 costs of suit. And that the plaintiff, as surviving partner of said firm, did on the 14th day of December, A. D. 1868, recover judgment on the law side of your hon. court in a suit therein pending, numbered 4856, wherein the plaintiff was plaintiff, and the defendant George Seitz was defendant, against the said George Seitz for the sum of $613.61, with interest according to said judgment and $21.10 costs.

That the plaintiff has caused writs of fi. fa. to be issued upon said judgments and to be placed in the hands of the United States
4 marshal for said District, who has returned the same nulla bona; all of which will more fully appear by reference to short copies of both of the said judgments appended hereto, marked respectively "Exhibit J. T. M. No. 1 and No. 2," which are prayed to be read herewith and made part hereof. That neither the said Walter Harper nor the plaintiff has received any payment or satisfaction of either of said judg-

ments nor of any part thereof; nor has any person received the same for the benefit of the said Harper or of this plaintiff.

4th. That the defendant George Seitz did on the 13th day of January, A. D. 1870, purchase from the defendant Kendall, lot 61, in square 448, in the city of Washington, District aforesaid, according to the subdivision of said square recorded in the surveyor's office for said District in liber N. K., folio 275. That the said George Seitz, knowing of the judgment above referred to and desiring to evade the same, did conspire with his wi*th*, the said Mary E. Seitz, to delay, hinder, and defraud
5 the plaintiff by persuading the said Kendall to convey the said lot to the said Mary E. Seitz, and not to the defendant George Seitz, who was the veritable purchaser thereof.

That the said Kendall did accordingly, at the request of the defendants, George and Mary E. Seitz, convey the said property to the defendant, Mary E. Seitz, in fee-simple, by deed of indenture duly recorded in liber 407, folio 370, one of the land-records of Washington County, District aforesaid, which record is hereby referred to and prayed to be taken as part hereof.

That said deed was duly executed and delivered on the said 13th day of January, A. D. 1870.

That the purchase-money for said lot and the improvements thereon, amounting to $6,500, has been paid by the said George Seitz, with money earned himself, and to which his said wife had no title whatever. That a deed of trust was taken by the said Kendall upon
6 said lot to secure the payment of the paid purchase-money; that said deed of trust was executed both by the said George and Mary E. Seitz, and that said deed of trust has been released to the said George and Mary E. Seitz, all of which will more fully appear by a reference to said deeds of trust and release duly recorded in liber 602, folio 436, and in liber 698, folio of the land-records, &c., which records are prayed to be read herewith, and made part hereof. And the plaintiff charges and avers that the said deed, conveying the said lot from the said Kendall to the said Mary E. Seitz, was made with fraud, and with the intent to delay, hinder, and defraud the creditors of the said George Seitz, and that the said deed is fraudulent and of *none* effect as against the plaintiff and other judgment creditors of the said George Seitz.

5th. That the defendant George Seitz did, on the 18th day of October, A. D. 1872, purchase from one William F. Mattingly a
7 certain part of lot 1, in square 343, in said city of Washington, more particularly described in the deed next hereinafter referred to; that the said Mattingly, in conjunction with his wife, did on the said 18th day of October, A. D. 1872, convey the said property, in fee-simple, to the defendant, Mary E. Seitz, all of which will more fully appear by a reference to said deed duly recorded in liber 699, f. , one of the land-records, &c., which record is prayed to be read herewith and made part hereof. That the purchase-money of said lot, amounting to $6,000, was paid by the said George Seitz with money borrowed on his own credit from the defendant, The Arlington Fire-Insurance Company, and which money the said George Seitz and not the defendant, Mary E. Seitz, is bound to pay. That the said conveyance from the said Mattingly to the said Mary E. Seitz was fraudulently procured by
8 the defendants, George and Mary E. Seitz, with intent to delay, hinder, and defraud the plaintiff and other judgment creditors of the said George Seitz; and the plaintiff charges and avers that the said deed was so made, and is fraudulent and void as against the plaintiff and other judgment creditors of the said George Seitz.

6th. That the defendants, George and Mary E. Seitz did, on the 19th day of October, A. D. 1872, execute unto the defendants, Todd & Nourse, trustees, a certain deed of trust to secure the payment of $6,000 to the defendant, The Arlington Fire-Insurance Company, upon the said lot 61, in square 448, all of which will more fully appear by a reference to said deed of trust duly recorded in liber 698, f. , which said record is prayed to be read herewith and made part hereof; and the plaintiff charges and avers that the said deed of trust is subject to the lien of his said judgments and to be postponed thereto.

9 7th. That the defendants, George Seitz and Mary E. Seitz, did on the 19th day of October, A. D. 1872, execute unto the defendant, Kennedy, a deed of trust upon the said lot 61, in square 448, to secure the payment of $600 to the defendant, Kendall, all of which will more fully appear by a reference to said deed of trust duly recorded in liber 698, f.; which said record is prayed to be read herewith and made part hereof; and the plaintiff charges and avers that the said deed of trust is subject to the lien of his said judgments and to be pos'-poned thereto.

8th. That both of said last-mentioned deeds of trust were executed subsequently to the execution of the release hereinbefore referred to of said lot 61, to George and Mary E. Seitz, from John W. Kennedy, trustee; and further, the plaintiff charges and avers that both the defendant the Arlington Fire-Insurance Company, and the defend-

10 ant Kendall, well knew that the said George Seitz was the real owner of said lot 61 and that the conveyance to his wife Mary E. Seitz was intended to delay, hinder, and defraud the creditors of the said George Seitz.

The plaintiff therefore prays:

1st. That the said lot 61 in square 448, and the said part of lot 1 in square 343, be subjected to the liens of the plaintiff's said judgments, and that some suitable person be appointed trustee to make sale of said property for the satisfaction of said liens out of the proceeds of sale, after paying all expenses thereof and all valid prior liens.

2d. That the conveyances hereinbefore referred to from John E. Kendall to Mary E. Seitz, and from William F. Mattingly to Mary E. Seitz, be declared fraudulent and void, as against the plaintiff and other judgment creditors of the said George Seitz.

3d. That the plaintiff may have such other and further relief

11 as the nature of the case may require, and as unto your honor shall seem meet.

4th. That your honors will grant unto the plaintiff, the United States, writ of subpœna to be directed to the said defendants, commanding each and every one of them, &c.

JOHN T. MITCHELL.

SAML. L. PHILLIPS,
R. ROSS PERRY.
*Sol'rs for Pl'ff.*

*Exhibit J. T. M. No. 1.*

Clerk's office, supreme court of the District of Columbia.

HARPER & MITCHELL
*vs.*
GEORGE SEITZ. } No. 4748. Docket.

1868, June 9. To judgment $1,635.50, being the principal of 33 notes with interest. (See minutes No. 4, folio 249.)

Fi. fa. Nulla bona. Cost $20.30.
Test:

R. J. MEIGS, *Clerk.*

12 *Exhibit J. T. M. No. 2.*

Clerk's office, supreme court of the District of Columbia.

JOHN T. MITCHELL, SURVIVING PARTNER OF Harper & Mitchell, *vs.* GEORGE SEITZ. } No. 4856.

1868, Dec. 14. To judgment ..... $613 61/100
Interest from 1st Sept., 1866, till paid, & cost.
Fi. fa. Nulla bona. Cost $21.10.
Test:

R. J. MEIGS, *Clerk.*

13 *Summons to answer.*

In the supreme court of the District of Columbia, November 6th, 1872.

JOHN T. MITCHELL, COMPLAINANT, *vs.* GEORGE SEITZ ET AL., DEFENDANTS. } 2973. Equity. Docket 12.

The President of the United States to George Seitz & wife, Mary Elizabeth Seitz, John W. Kennedy, William B. Todd, jr., Edward M. Nourse, John E. Kendall, and the Arlington Fire Insurance Company of the District of Columbia, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

*Marshal's return.*

Summoned all.

A. SHARP, *Marshal.*

NOVEMBER 6TH, 1874.

14 *Answer of the Arlington Fire Ins. Co. Filed Dec. 7, 1872.*

Supreme court of the District of Columbia.

J. T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity.

Answer of the Arlington Fire Insurance Company.

1. The said defendants know nothing of the averments of paragraph No. 1.

2. They admit the averments of paragraph No. 2.

3. They have no knowledge of the matters stated in paragraph No. 3, but they have no reason to doubt the truth of the averments in regard thereto.

4. They do not know and cannot admit that the defendant, George Seitz, purchased lot 61, in square No. 448, in Washington, and conspired with his wife to hinder and delay his creditors, the plaintiff and
15 others, by persuading Kendall to convey said property to his, said Seitz's wife, or that said property was paid for by said George Seitz, with money earned by himself to which his wife had no title. They admit that a deed of trust was given on said property and subsequently released, as alleged. They do not, however, admit that said deed to Mary E. Seitz was fraudulent as against the plaintiff, and they require proof thereof, if it shall be material to the interest of the respondents.

5. They do not know and cannot admit that the defendant, George Seitz, purchased from Wm. F. Mattingly a part of lot 1, in square 343, which was by him conveyed to Mary E. Seitz, but are informed that said purchase was made by said Mary E. Seitz. They deny that said property was paid for with money borrowed by said George Seitz from these respondents on his own credit, and to the contrary thereof aver that
16 said loan was made directly by respondents to said Mary E. Seitz; that the transaction was with her, and the loan made on the security of her deed of trust, in which, however, said George Seitz was required to join, in order to pass any possible future interest in the property that might accrue to him as tenant by the curtesy. They cannot admit that the deed from Mattingly to said Mary E. Seitz was fraudulent against the plaintiff, and require proof thereof if it shall be material.

6. They admit that the defendants, George and Mary E. Seitz, executed a deed of trust to the defendants, Todd & Nourse, as alleged, but said deed embraced both the pieces of property before described, instead of only said lot 61 in square No. 448, and they are advised that said deed of trust is not subject to the lien of the plaintiff's judgment.

7. They know nothing of the matters stated in paragraph 7.

17 8. They wholly deny that they knew the said George Seitz to be the real owner of said lots of ground, and that the conveyances to his were intended to hinder, delay, and defraud the creditors of said George Seitz; and to the contrary thereof, they aver that they made the loan aforesaid to said Mary E. Seitz and took from her the deed of trust aforesaid, believing her to be the real owner of said property and in good faith, and without notice of any interest of said George Seitz in the property; that they are therefore bona-fide purchasers, without notice, and entitled to be protected, and they pray the same benefit of the ground of defence against the relief prayed in the bill, as if it were formally set forth by way of plea.

And they pray to be hence dismissed with their reasonable costs.

[SEAL.] JAMES C. KENNEDY, *President.*

18 *Answer of Todd & Nourse.—Filed Dec.* 10, 1872.

Supreme court of the District of Columbia.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity.

Answer of Wm. B. Todd, jr., and Edward M. Nourse.

These respondents know nothing of the matters stated in the bill of

complaint, except that they are the trustees named in the deed of trust referred to in parargraph No. 6 of said bill, and therefore can neither admit nor deny the same.

Personally appear Wm. B. Todd, jr., and Edward M. Nourse, and make oath that the matters stated in the aforegoing answer, as of their own knowledge, are true, and those stated on information they believe to be true.

WILLIAM B. TODD, JR.
E. M. NOURSE.

Subscribed and sworn to before me this 10th of December, 1872.
R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Asst. Clerk.*

19 *Answer of George and Mary Seitz.—Filed Jan. 7, 1873.*

In the supreme court of the District of Columbia.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity.

Answer of George and Mary Seitz.

The defendants admit the citizenship of the parties, the characters and rights in which the parties sue and are sued, and also the rendition of the judgments set forth in paragraph 3.

And for answer to the fourth paragraph they say that it is untrue that the said George purchased the property therein named, and it is untrue that he paid for the same, and untrue that he owned or advanced any money to pay for the same, and untrue that there was any understanding or conspiracy to have the same deeded to the said
20 Mary, to defraud the plaintiff or any creditor of the said George, and they deny all fraud in said paragraph charged.

On the contrary they say that the said Mary E., in her own right, and in her own name, and for her sole and separate property, purchased the same for herself and took the deed in her own name; that the name of the said George was joined with hers in said deed of trust, merely to meet the wish of the other party, and not because he had any interest in or to the same.

Said deeds were all duly executed and recorded.

That the said Mary paid said purchase-money, to wit, $1,000 in hand and the balance on deferred time, and all out of her own means and money earned and procured wholly by herself, and not from the said George nor by or through him or his exertions; that the said George signed the notes of the said Mary for the deferred payments after the
21 name of the said Mary, solely at the request of the said Kendall, and not because the transaction was his.

For answer to the fifth paragraph they say that the property therein described was purchased by the said Mary from the said Mattingly, for herself, in her own name, and in her own right; that, to enable her to pay for it, she negotiated a loan of the Arlington Fire-Insurance Co.; that the whole transaction was hers and not that of the said George; that he had nothing to do with, in, or about it, except as her agent, or to express his assent to the transaction for the satisfaction of other parties.

And they deny that the said George was the purchaser and became

the owner of said property, and they deny that he borrowed and paid the purchase-money.

And they deny that the conveyance of said property as made by said Mattingly to the said Mary was fraudulent or for any purpose of
22 defrauding, hindering, or delaying the creditors of the said George, but the same was made in good faith.

And for answer to the 6th, 7th, & 8th, they say that the deed of trust executed to Todd & Nourse was in good faith, to secure the money loaned to the said Mary by the Arlington Insurance Co., and that the existing deed of trust on said lot 61 to said Kendall was released for the purpose of enabling the security to be made to said Arlington Insurance Co., and said *said* judgments against said George never at any time became liens upon said property; that the trust-deed to said Kendall, mentioned in the 7th paragraph, was made to secure the balance of said original purchase-money then remaining unpaid, and is in no way subject to any liens of any judgment against said George, and they deny that either of said deeds of trust on said lots, or either of them, are in any way subject to any lien or liens on account of any debt or
23 debts owing by said George to the plaintiff, or to any other person.

And they deny that the plaintiff is entitled to any relief in the premises.

And, having fully answered said bill, they pray to be hence dismissed with their costs.

MARY E. SEITZ.
GEO. SEITZ.

A. G. RIDDLE,
*Of Counsel.*

George and Mary Seitz, above named, being sworn, say that the matters and things set forth in the above answer as of their own knowledge are true, and that all the other matters and things as upon information from others they believe to be true.

CHAS. CONS. CALLAN,
*Notary Public.*

24 *Replication.—Filed Feby. 1st, 1873.*

In the supreme court of the District of Columbia, the 1st day of February, A. D. 1873.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } No. 2973. Equity docket 12.

The plaintiff hereby joins issue with the defendants, George Seitz, Mary E. Seitz, William B. Todd, jr., Edward M. Nourse, and The Arlington Fire-Insurance Company upon their answers filed in said cause.

SAML. L. PHILLIPS,
R. ROSS PERRY,
*Of Counsel.*

*Order to take testimony.*

MITCHELL *vs.* SEITZ ET AL. } 2973. Equity docket 12.

Upon motion of R. Ross Perry, esq., of counsel for plaintiff, it is or-

dered that this cause be referred to J. J. Johnson, esq., to take testimony therein, and to report the same to this court.

By the court.

A. W.

25 *Compl't's testimony.*

In the supreme court of the District of Columbia.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity doc. 12.

COMPLAINANT'S TESTIMONY.

JOHN E. KENDALL, being duly sworn, says: I reside No. 609 E street in this city. I know George Seitz, one of the defendants in this case. I know his wife, Mary E. Seitz. Mr. George Seitz, the defendant, called on me some time in the latter part of January, 1870, and wanted to know the price of lot 61, in square 448 in this city. I gave him the price at $6,500, and the terms. My impression now is that Mr. Seitz called on me at first before January. It was not until about the last of January that the purchase was finally agreed upon. I met Mr.
26 Seitz & Mrs. Seitz at Mr. Riddle's office in relation to the title. Mr. Riddle declaring the title to be good, they agreed to execute the papers. On the 3d of February, Mr. George Seitz & Mrs. Seitz came to my office and executed a deed of trust and notes. The notes were signed by Mary E. Seitz and George Seitz. Mrs. Seitz did not want Mr. Seitz to join in the notes or the deed of trust, but I insisted and they did it. I wanted it done to secure Mr. Seitz' dower interest. Mrs. Seitz paid me then $1,000 cash and gave me one note for six months at $600; one note for 12 months at $600; one note for eighteen months at $600; one not' for twenty-four months at $600, and another for thirty months at $3,100. All these notes were signed by George and Mrs. Mary E. Seitz. Most of these notes were paid at the Bank of Washington. About $100 is still due. The last note was principally paid at the Bank of Washington. I think they met the first notes promptly. Some
27 of them were paid before they became due. They made a payment of $500 on the 15th of July, 1872, and the balance by instalments until the renewal of the $600 of it. Mr. Seitz came to see me about extending the time. His son came also. I think he said they would be able to pay some of it soon. I think the principal part of the $3,100 note was paid in the bank. I do not recollect whether Mrs. Seitz did make me any payment except the $1,000 cash payment. I don't recollect whether John F. Seitz, the son, ever made me any payment. To the best of my recollection he did not.

Adjourned till Thursday the 13th inst., at 2 o'clock p. m.

JOHN J. JOHNSON,
*Examiner.*

Met pursuant to adjournment. Present, Mr. Perry for complainant. Defendant's counsel not present.

The examination-in-chief was resumed as follows:

28 I find on looking at my bank-book that three of the $600 notes were paid in bank about the time they became due. They last note of the $600 was paid to me. There were four $600 notes. The $3,100 was principally all paid in bank as follows:

First was made on the 15th of July, 1872, $1,500; second payment on the 5th of August, 1872, $400; on the 4th of September, $200; the balance of the $3,100, except the $600 renewal, was paid to me in person, either by Mr. Seitz or Mrs. Seitz. The $600 renewal was paid in bank as follows: Nov. 6, 1872, $100; Dec. 5, $100; Dec. 21st, $200; Jan. 7, $100. This was paid at the Bank of Washington.

JNO. E. KENDALL.

Sworn and subscribed to before me this 13th day of Feby., 1873.

JOHN J. JOHNSON,
*Examiner.*

29 MONDAY, *April 21st*, 1873.

Present, counsel on either side, when—

C. OTLEY G. WATKIN being sworn, says:

I am a resident of this city. I am acquainted with Mr. George Seitz and his wife, Mrs. Mary E. Seitz. I boarded with Mrs. Seitz for twenty-two months, commencing in June, 1870, and left there in March or April, 1872. This was at 1224 6th street, between M and N streets, west side of the street, in this city. Mr. and Mrs. Seitz, and their three children and one servant, comprised the family. They remained members of the family during the period I was there. The children are all boys, and ages ranged from ten, twelve, and fourteen, along about there. They did nothing to support themselves.

The average number of boarders during the time I was there were about four. There were four rooms in which they could put
30 boarders. There were three double rooms and one single room. Part of the time I occupied a double room, and the other part a single room. I paid $20 a month during the whole of the time I boarded there. I do not know the average amounts paid by the other boarders. I think people generally pay from twenty-five to thirty dollars a month. George Seitz, the husband of Mary E. Seitz, was at the bakery. I don't know whether he was the proprietor or not. It was known as his bakery. The family composed as above stated ate at the same table. I don't know who supplied the table. When I left there in 1872 there were no boarders there. In my estimate of the average number of boarders there I include the table boarders also. There would not be an average of four boarders that roomed there.

Cross-examined:

I paid nothing for my room. Twenty dollars I paid included
31 my room and board; anywhere else for less than twenty-five to thirty dollars a month. I never knew this bakery to be Seitz's bakery. It was *was* always known as George Seitz's bakery.

Mr. Seitz has four other sons besides the three I spoke of. I don't know whether they are of age or not. I don't know whether any of them are of age, but I suppose Mr. John Seitz is of age.

When I boarded there three of his sons worked at the bakery.

I am book-keeper for Hanson & Blackford, insurance agent. This property is insured in one company. Mr. Seitz insured the property and paid the money. I don't know who did the marketing.

Redirect:

I don't know where things came from. I saw them sent there in Mr. Seitz's bakery-wagon—that is provisions. I suppose it was from there.

The wagon had no name on it. It would be sometimes driven by
32 an employee of Mr. Seitz, and sometimes by one of his sons. I

did not see that wagon there every day. I would leave there early in the morning, and not come back until late in the evening. If I was home at that hour I would generally see the wagon. I supposed the marketing would be for two days, Saturday and Sunday. Mrs. Seitz was generally home on those occasions. Sometimes she would be at church. She was a very early riser. She did not do the marketing; she generally sent down for what she wanted.

Recross:

I don't know of my own knowledge that the person driving the wagons was an employee of Mr. Seitz. On one or two occasions I know of her sending to her son John for what she wanted; say some half dozen occasions. In fact, I have written orders for her to John. I don't know of her sending to anybody else besides John.

33 By Mr. Perry:

I have seen one of Mr. Seitz's sons in the wagon. I don't think I ever saw Mr. Seitz in the wagon. I never saw Mrs. Seitz have any other employment besides keeping house.

C. OTLEY G. WATKIN.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON, *Examiner.*

Appeared also HORATIO BATES; being sworn, says:

I reside in this city, and I know Mr. George Seitz and his family. I boarded there, I think, eleven months, from June, 1870, to May, 1871. My wife boarded there with me. The boarders that were in the house at the time I went there would average four besides table-boarders—myself and wife and another gentleman and his wife. At one
34 time a gentleman and his wife and a little child boarded there, making, in all, five. I paid sixty dollars a month for myself and wife. I don't know what other boarders paid. There were five boarders there when I left. Mr. and Mrs. Seitz and three little boys and a servant composed the family. Mr. G. Watkins was there the whole period I was there. I have heard Mr. G. Watkins' testimony, and I think it all correct so far as I know.

Cross-examined:

I can't say how long five persons and a little child boarded there.

Redirect:

During the time I boarded there, Mrs. Seitz was not engaged in any other business, that I know of.

35 Recross:

I had no knowledge what she did during the day.

HORATIO BATES.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON,
*Examiner.*

Appeared also ALFRED BODEMAR; being sworn, says:

I am a resident of this city, and keep a drug-store on the southeast corner of 6th and N streets, and short distance from where Mr. Seitz lives. I know Mr. George Seitz. I don't know his wife more than seeing her at the window in passing. I have been there ever since they have, and I was in that neighborhood before they came. I know one time two gentlemen boarded there. Sometimes there were two, three, and
36 four. I can't say whether there were ever more than five there, but I can't say positively. Sometimes I saw a bakery-wagon stop

there—I can't say how often. Generally I saw bread taken from the wagon into the house. I don't know anything about Mrs. Seitz.

A. BODEMAR.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON,
*Examiner.*

CHARLES E. WHITE, sworn, says:

My name is Charles E. White. I am paying-teller of the Bank of Washington, of this city.

There was a note of from $2,000 to $3,000, which matured about three or four months ago, signed by George Seitz and Mary E. Seitz, payable to the order of John E. Kendall, by him deposited in the Bank of Washington for collection.

37 There were four or five payments made on the note to me as teller of the bank. Some were made before and some after maturity of the note. The amount of the payments ranged from $100 to $500. I recollect positively four or five payments, and there might have been more. These payments—all or a greater portion of them—were made by George Seitz in person. If I am correct in supposing there were five payments, George Seitz personally made four of them. None were paid by a woman, to my recollection.

Cross-examination:

I don't know whose money this was. John Seitz did not make several of these payments, to my knowledge. He did not pay more than one, if any. My recollection is that he did not pay any.

CHAS. E. WHITE.

Subscribed and sworn to before me this 22d day of April, A. D. 1873.

BEN. G. LOVEJOY,
*Ex. in Chancery.*

38 WILLIAM C. SMITH, being duly sworn, says:

I am a resident of this city. I have had experience in keeping a boarding-house for the past four years.

Q. What would be the expenses of supplying a family consisting of six adults, three children, ranging from ten to fourteen years of age, and one servant, with marketing and groceries per month, considering the fare to be supplied the average boarding-house fare?

A. My marketing costs me two dollars a day. I have nine, with a child—eight adults and one child.

Q. Does that include groceries?

A. No, sir.

Q. What is your grocery-bill per month?

A. From twenty to twenty-five dollars per month.

Q. What would be the average cost of servants per month?

A. Ten dollars per month.

Q. What would be the average cost of cooking?

39 A. For cooking purposes alone, from a half to three-quarters of a ton per month. I pay from nine to nine dollars and a half per ton. The probable cost of gas per month would be five dollars. The average rate of marketing would be $60 per month; groceries, from $20 to $25 per month; servant, ten dollars; and fuel about five dollars, and gas would average four or five dollars. I think the prices I have given here, from my own experience, would be the average prices required for conducting boarding-houses of an average quality.

did not see that wagon there every day. I would leave there early in the morning, and not come back until late in the evening. If I was home at that hour I would generally see the wagon. I supposed the marketing would be for two days, Saturday and Sunday. Mrs. Seitz was generally home on those occasions. Sometimes she would be at church. She was a very early riser. She did not do the marketing; she generally sent down for what she wanted.

Recross:

I don't know of my own knowledge that the person driving the wagons was an employee of Mr. Seitz. On one or two occasions I know of her sending to her son John for what she wanted; say some half dozen occasions. In fact, I have written orders for her to John. I don't know of her sending to anybody else besides John.

33 By Mr. Perry:

I have seen one of Mr. Seitz's sons in the wagon. I don't think I ever saw Mr. Seitz in the wagon. I never saw Mrs. Seitz have any other employment besides keeping house.

C. OTLEY G. WATKIN.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON, *Examiner.*

Appeared also HORATIO BATES; being sworn, says:

I reside in this city, and I know Mr. George Seitz and his family. I boarded there, I think, eleven months, from June, 1870, to May, 1871. My wife boarded there with me. The boarders that were in the house at the time I went there would average four besides table-boarders—myself and wife and another gentleman and his wife. At one
34 time a gentleman and his wife and a little child boarded there, making, in all, five. I paid sixty dollars a month for myself and wife. I don't know what other boarders paid. There were five boarders there when I left. Mr. and Mrs. Seitz and three little boys and a servant composed the family. Mr. G. Watkins was there the whole period I was there. I have heard Mr. G. Watkins' testimony, and I think it all correct so far as I know.

Cross-examined:

I can't say how long five persons and a little child boarded there.

Redirect:

During the time I boarded there, Mrs. Seitz was not engaged in any other business, that I know of.

35 Recross:

I had no knowledge what she did during the day.

HORATIO BATES.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON,
*Examiner.*

Appeared also ALFRED BODEMAR; being sworn, says:

I am a resident of this city, and keep a drug-store on the southeast corner of 6th and N streets, and short distance from where Mr. Seitz lives. I know Mr. George Seitz. I don't know his wife more than seeing her at the window in passing. I have been there ever since they have, and I was in that neighborhood before they came. I know one time two gentlemen boarded there. Sometimes there were two, three, and
36 four. I can't say whether there were ever more than five there, but I can't say positively. Sometimes I saw a bakery-wagon stop

there—I can't say how often. Generally I saw bread taken from the wagon into the house. I don't know anything about Mrs. Seitz.

A. BODEMAR.

Sworn and subscribed to before me this 21st day of April, 1873.

J. J. JOHNSON,
*Examiner.*

CHARLES E. WHITE, sworn, says:

My name is Charles E. White. I am paying-teller of the Bank of Washington, of this city.

There was a note of from $2,000 to $3,000, which matured about three or four months ago, signed by George Seitz and Mary E. Seitz, payable to the order of John E. Kendall, by him deposited in the Bank of Washington for collection.

37 There were four or five payments made on the note to me as teller of the bank. Some were made before and some after maturity of the note. The amount of the payments ranged from $100 to $500. I recollect positively four or five payments, and there might have been more. These payments—all or a greater portion of them—were made by George Seitz in person. If I am correct in supposing there were five payments, George Seitz personally made four of them. None were paid by a woman, to my recollection.

Cross-examination:

I don't know whose money this was. John Seitz did not make several of these payments, to my knowledge. He did not pay more than one, if any. My recollection is that he did not pay any.

CHAS. E. WHITE.

Subscribed and sworn to before me this 22d day of April, A. D. 1873.

BEN. G. LOVEJOY,
*Ex. in Chancery.*

38 WILLIAM C. SMITH, being duly sworn, says:

I am a resident of this city. I have had experience in keeping a boarding-house for the past four years.

Q. What would be the expenses of supplying a family consisting of six adults, three children, ranging from ten to fourteen years of age, and one servant, with marketing and groceries per month, considering the fare to be supplied the average boarding-house fare?

A. My marketing costs me two dollars a day. I have nine, with a child—eight adults and one child.

Q. Does that include groceries?

A. No, sir.

Q. What is your grocery-bill per month?

A. From twenty to twenty-five dollars per month.

Q. What would be the average cost of servants per month?

A. Ten dollars per month.

Q. What would be the average cost of cooking?

39 A. For cooking purposes alone, from a half to three-quarters of a ton per month. I pay from nine to nine dollars and a half per ton. The probable cost of gas per month would be five dollars. The average rate of marketing would be $60 per month; groceries, from $20 to $25 per month; servant, ten dollars; and fuel about five dollars, and gas would average four or five dollars. I think the prices I have given here, from my own experience, would be the average prices required for conducting boarding-houses of an average quality.

Q. Supposing an average of four boarders, two of whom paid $20 a month each, remaining two paying sixty dollars for both, making a total of $100 per month receipts from boarders, and supposing the expenses of the house to be, as you have stated, an average of $98 per month, I like to ask you how much profit would be realized?

A. The profits would be about two dollars.

Q. Does the total you give of $98 per month include incidental expenses, or is it confined to those items specified in it?

40 A. No, sir; the estimate is confined to the items specified in it.

W. C. SMITH.

Sworn and subscribed before me this 24th day of April, 1873.

J. J. JOHNSON,
*Examiner.*

Appeared also A. S. SOLOMON', being sworn, says:

I reside in this city. As treasurer of the Provident Aid Society I paid bills to Mr. George Seitz for bread furnished to that society. I presume it was by contract, as most of the purchases were made by contract. My memory will not serve me, but I should say for some three or four years past.

The bills were made against the Provident Aid Society and in favor of George Seitz.

Cross-examined:

I am not acquainted personally with George Seitz.

41 Q. How long has it been since you paid the last bill?

A. I think within the past four years.

Q. Do you mean by that that it has been four yea's since you paid the last bill?

A. No, sir; it is most likely within three years. I think it was about three years ago. Contracts had been made with John F. Seitz, but not this particular contract. I can't say who actually received the money. I can only say in whose favor the bill was made out. I don't know that I ever paid any of George Seitz's money to John F. Seitz. I paid John F. Seitz's money. I cannot say that I ever paid any money of George Seitz. The bills were made payable to George Seitz, but I can't say whether it was paid to his representative or to himself. I can't tell when the contract ended with George Seitz and when it commenced with John F. Seitz. I can't tell which was prior.

A. S. SOLOMONS.

Sworn and subscribed to before me this 24th day of April, 1873.

J. J. JOHNSON,
*Examiner.*

42 Appeared also JOHN T. MITCHELL, being sworn, says:

I reside in this District. I am the plaintiff in this case.

I have had experience as the head of a family for the past ten years. I have four white adults, two children, and three adult servants. I have never kept a boarding-house, but simply a private house.

My expenses for marketing will average me $2.50 per day. My grocery-bill is from $30 to $35 per month.

My servants' wages will average ten dollars per month. Some of my servants I pay more than that, but that is the average. My average for fuel is $16 per month. My average of gas is seven dollars per month.

JOHN T. MITCHELL.

Sworn and subscribed to before me this 24th day of April, 1873.

J. J. JOHNSON, *Exam.*

43 Appeared also JOHN JAMESON, being sworn, says:

I reside in this city. I know George Seitz and Mrs. Mary E. Seitz. Their house is 1224 6th street, between M & N streets, in this city. I boarded there with my wife and a small child some time during March, 1871. My wife remained there till the 1st of May the same year; I remained there till some time in October. My wife came back from the North, and we remained there one month longer.

During the time I was there I should think the boarders, both table and those that roomed there, would average four. I paid for myself and wife up to 1st of May $45 a month. The time we were there after I paid $50 a month; when I was there alone I paid Mrs. Seitz $20 a month for myself.

I was accustomed to see Mrs. Seitz. She was always about, unless when making a visit. I was accustomed to see her in the even-
44 ing about the house also. I never heard of her having any other employment than that of keeping boarding-house. I do not know who did the marketing. I heard Mrs. Seitz give orders for marketing to the man who came up in the wagon. I think the wagon was Mr. Seitz's; I don't know. Mr. George Seitz is by occupation a baker. He told me so, and I have seen him in a bakery on New York avenue, near corner of 10th street, in this city.

Cross-examined:

Sometimes she gave orders by saying, Tell John to send so and so for dinner.

JNO. JAMESON.

Sworn and subscribed to before me this 24th day of April, 1873.

J. J. JOHNSON,
*Examiner.*

45 DISTRICT OF COLUMBIA,
*County of Washington, ss:*

I, John J. Johnson, examiner in chancery, do hereby certify that, in pursuance of agreement, the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence, (except the one hereinbefore mentioned,) the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

J. J. JOHNSON,
*Examiner in Chancery.*

46 *Decree.—Filed Feby.* 25, 1874.

In the supreme court of the District of Columbia.

JOHN T. MITCHELL
*vs.*
MARY E. SEITZ, GEORGE SEITZ, ET AL. } 2973. Equity docket 12.

This cause coming on to be heard on bill, answers, replication, and testimony, and the same having been argued by counsel and duly considered, the court is of opinion that the said conveyance described in said bill, from John E. Kendall and wife to Mary Elizabeth Seitz, made the 13th day of January, 1870, and recorded in liber No. 607, fol. 370,

of land-records for District of Columbia, was made as alleged in said bill, and that the said purchase-money for the conveyance from said Mattingly and wife, made the 18th day of October, 1872, and recorded in liber 699, fol. 66 of said records, to Mary E. Seitz, was derived from a loan from the Arlington Fire-Insurance Co., secured by a deed
47 of trust to said Nourse and Todd, made the 19th day of October, 1872, and recorded in liber No. 698, fol. 323 of said records, on said pieces of land bought as aforesaid from said Kendall and said Mattingly; and the court is further of opinion that the said conveyance from said Mattingly to said Mary E. Seitz, and said deed of trust from said Mary E. Seitz and George Seitz to Todd and Nourse to secure said Arlington Fire-Insurance Co., and said deed of trust from said Mary E. Seitz and George Seitz, made the 19th day of October, 1872, recorded in liber No. 968, fol. 361 of said land-records, to John W. Kennedy, to secure said John E. Kendall, were either of them bona-fide as respects the rights of the said Mattingly, Nourse and Todd, the Arlington Fire-Insurance Co., John W. Kennedy, and John E. Kendall.

Now, therefore, it is, this 24th day of February, 1874, ordered, adjudged, and decreed by the court that the said conveyance of
48 property from said Kendall and wife to Mary E. Seitz be, and the same is hereby, declared fraudulent and void against the complainant to this bill as creditor of said George Seitz, and that all the estate, right, and title of the said Mary E. Seitz of and *into* the piece of land lying and being in the said city of Washington, District of Columbia, and known on the ground-plat thereof as lot numbered sixty-one, (61,) in square numbered four hundred and forty-eight, (448,) according to the subdivision made by the corporation of said city, and of and *into* that piece of land lying in said city, the same being that part of lot numbered one, (1,) in square numbered three hundred and forty-three, (343,) contained within the following metes and bounds: beginning at a point on the line of New York avenue distant seventy-three (73) feet eight (8) inches westwardly from the southeast corner of said lot, and at the intersection of said avenue and an alley 10 feet
49 wide; thence eastwardly with said avenue thirty-six (36) feet ten (10) inches; thence northwardly, at right angles with said avenue, seventy-four (74) feet six (6) inches; thence westwardly thirty-six (36) feet three (3) inches, more or less, to the east side of the said 10-feet alley; and thence southwardly along said alley by a straight line to the place of beginning, together with the improvements thereon, belong to and are, as against the complainant, the property and estate of the said George Seitz; and that R. Ross Perry, esq., be, and he is hereby, appointed trustee, with full power to sell, in fee-simple, all the estate, right, title, and interest of said George Seitz and Mary E. Seitz of and *into* said two pieces or parcels of land and improvements thereon, or so much thereof as may be necessary to pay the said indebtedness of said complainant and all other creditors as against whom the said conveyance may herein be declared to be fraudulent and void, provided they
50 shall come in and be lawfully made parties hereto and establish their claims; the said sales, however, to be made subject to the rights of said deeds of trust to said Nourse & Todd and to said Kennedy.

The said sale or sales to be made at public auction to the highest bidder, first giving twenty days' notice thereof by advertisement in some newspaper published in Washington City, D. C., the advertisement to be inserted at least ten times.

The proceeds of sale to be held by the said trustee, to abide the fur-

ther order of the court. The trustee, before the day of sale, shall file his bond, with sufficient surety, in the penal sum of six thousand dollars, to faithfully execute the trusts hereby reposed in him.

By the court.

A. WYLIE.

51 *Appeal to gen. term.—Filed Feby.* 25, 1874.

In the supreme court of the District of Columbia.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity dock. 12.

The clerk will please enter an appeal to the general term from the decree this day rendered in this cause.

FRANCIS MILLER,
*Of Counsel for Deft. Seitz.*

FEBRUARY 25TH, 1874.

Appeal entered as directed in above precipe.
By the clerk.
FEBRUARY 25TH, 1874.

52 *Appeal-bond.—Filed March* 7, 1874.

In the supreme court of the District of Columbia.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity.

The defendants, Mary E. and George Seitz, having appealed to the general term from the decree pronounced against them in the special term on the 25th day of February, 1874, and John E. Kendall, their surety, for themselves, and each of them, their and each of their heirs, executors, and administrators, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pray its decree, which they agree may be pronounced against all of them.

MARY E. SEITZ. [SEAL.]
GEO. SEITZ. [SEAL.]
JNO. E. KENDALL. [SEAL.]

Approved this 7th March, 1874.

D. K. CARTTER,
*Chief-Justice.*

53 *Decree in gen. term.—June* 6, 1874.

In the supreme court of the District of Columbia, in general term, June 6th, 1874.

JNO. T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity docket 12.

This cause having been heard at the present term upon the record of the special term, and having been argued by counsel on both sides and submitted to the court, it is thereupon ordered, adjudged, and decreed that the decree of special term, from which this appeal was prosecuted, , and the same is hereby, affirmed with costs.

From which decree the defendant, by his solicitor, prays an appeal to the Supreme Court of the United States, here now in open court, and the same is allowed.

By order of the court.

54 *Appeal-bond to S. C. U. S.—Filed June 30, 1874.*

In the supreme court of the District of Columbia, 24th day of June, 1874.

JOHN T. MITCHELL *vs.* GEORGE SEITZ ET AL. } 2973. Equity.

Know all men by these presents that we, Mary E. Seitz and John E. Kendall, are bound unto the above-named John T. Mitchell in the sum of five hundred dollars, to be paid to the said John T. Mitchell, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 24th day of June, 1874.

Whereas the above-named George Seitz and Mary E. Seitz have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

55 Now, therefore, the condition of this obligation is, that if the above-named George Seitz and Mary E. Seitz shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

MARY E. SEITZ. [SEAL.]
JOHN E. KENDALL. [SEAL.]

Sealed and delivered in presence of—
FRANCIS MILLER.

Approved June 24th, 1874.

MAC ARTHUR,
*Justice Sup. Ct. D. C.*

*Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 10th day of October, 1874.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
*Assistant Clerk.*

(Indorsement on cover:) No. 189. George Seitz and Mary E. Seitz, appellants, vs. John T. Mitchell. Dist. of Columbia, sup. ct. Filed 17th October, 1874.

# Supreme Court of the United States.

*No. 189.*

GEORGE SEITZ AND MARY E. SEITZ, APPELLANTS,

*vs.*

JOHN T. MITCHELL.

*Appeal from the Supreme Court of the District of Columbia.*

## BRIEF FOR THE APPELLANTS.

### STATEMENT OF THE CASE.

This is a judgment creditors' bill filed by Mitchell, the surviving partner of the firm of Harper & Mitchell, against the appellants, and others. The bill alleges that two judgments had been obtained against the defendant, George Seitz, which were still subsisting and unsatisfied. It also sets forth that two pieces of property, fully described, had been purchased in the name of the defendant, Mary E. Seitz, and charges that they were purchased with the money of said George, and were conveyed to his wife for the purpose of hindering, delaying, and defrauding his creditors. It further charges that lot 61, in square 448, of the city of Washington, was purchased with money earned by George Seitz himself; and part of lot 1, in square 343, was paid for with money borrowed of the Arlington Fire Insurance Company, by George Seitz, *on his own credit.*

Certain deeds of trust given by Seitz and wife on these two pieces of property, securing certain indebtedness to one Kendall, and to the Arlington Fire Insurance Company, are referred to, and it is specifically charged that "the Arlington Fire Insurance Company, and the defendant, Kendall, well knew that the said George Seitz was the real owner of lot 61, and that the conveyance to his wife, Mary E. Seitz, was intended to delay, hinder, and defraud the creditors of the said George Seitz." The bill is not sworn to.

The trustees and beneficiaries in these deeds of trust are made parties defendant to the bill, but their rights are protected by the decree, and Seitz and wife are the only parties who appeal. Prayer that the conveyances to Mary E. Seitz be declared fraudulent and void as against the plaintiff, and for the sale of the property to pay the judgments.

The defendants, George and Mary E. Seitz, answer jointly, denying, specifically, each and every charge of fraud; averring that lot 61, in square 448, was bought by her, for her own use, and in her own right, with "money earned and procured wholly by herself, and not from the said George, nor by or through him or his exertions; and also that the part of lot 1, in square 343, was bought by her, for her own use, and in her own right, with money borrowed from the Arlington Fire Insurance Company, by her, the whole transaction being her's, and not her husband's, and that whatever was done in the matter by the husband was done by him as the agent of his wife. They claim that these several purchases and conveyance were made in good faith, and deny all charges of fraud and conspiracy made in said bill. The answer is duly sworn to by both George and Mary E. Seitz.

The answer of the Arlington Fire Insurance Company declines to admit the truth of the various allegations of fraud in the conveyances to Mrs. Seitz, and requires proof of the same; specifically avers that the loan made by it was made directly to Mary E. Seitz, and not to George Seitz;

and denies that it knew that George Seitz was the owner of the above-described property. Replication was duly filed to the answers of these and the other defendants.

The testimony of John E. Kendall, one of the defendants, and the vendor of lot 61, in square 448, and the teller of the Bank of Washington, was taken by the plaintiff, to show that deferred payments on the purchase of said lot, except $1,000 paid by Mrs. Seitz, were mainly received through George Seitz.

Several witnesses were examined to show that Mrs. Seitz kept a boarding house from June, 1870, to April, 1872, and that she had a small number of boarders, and the plaintiff and one other witness testified that the profits on such an establishment would be but trifling.

No testimony was taken by the defendants. A decree was passed declaring the conveyance to Mary E. Seitz fraudulent and void as to the plaintiff, but sustaining the deeds of trust to secure the Arlington Fire Insurance Co. and Kendall, and ordering the property to be sold, "subject to the rights of said deeds of trust," to pay the indebtedness of said George Seitz. From which decree George and Mary E. Seitz appealed.

POINT.

*The court below erred in setting aside the conveyances to Mrs. Seitz on the ground of fraud, when all allegations of fraud were specifically denied, and no sufficient proof was offered to sustain the charge.*

Lot 61, in square 448, was purchased January 13, 1870, and $1000 was paid at that time by Mrs. Seitz. The deferred payments extended up to January 7th, 1873—$3,100 having been paid after July 15th, 1872. The time covered by the testimony of the plaintiff in regard to Mrs. Seitz's keeping a boarding house extends from June, 1870, to April, 1872, and no attempt is made to show what her occupation

was before or after that time, and it is taken for granted that during that time she had no other source of income than the one referred to, and that before and after it she had none at all.

Every allegation of the bill charging fraud upon the appellants is distinctly met by their answer and denied. The charge that the loan of the Arlington Fire Insurance Company was made to George Seitz and on his credit, is also specifically denied by the answer of that company, as is any collusion on its part with the appellants.

The whole case of the plaintiff rests on the establishment of charges of fraud made in the bill. The answer has been sworn to by the appellants, is responsive to the bill, and meets all these charges fully. The sufficiency of the answer was admitted by the plaintiff when he filed his replication, without having excepted to it.

Story's Eq. Pl., §§ 867, 877, 850, 847, 846.
Barton's Suit in Eq., p. 116.
2 Md. Ch., Dec. 18, Rider *vs.* Riely.

The well-established principle in equity is that two witnesses, or one witness with corroborating circumstances, are necessary to overcome an answer responsive to the bill which has been duly sworn to.

2 Md. Ch., Dec. 18, Rider *vs.* Riely.
4 Howard, 218–224, Carpenter *vs.* Ins. Company.
2 Wallace, 423, Tobey *vs* Leonards.

In this case there is no witness to prove fraud, and the effort to prove corroborating circumstances is of the feeblest.

If it had been set down for hearing on bill, answers and replication, there can be no doubt that the court below should have dismissed the bill. In what essential particular does the testimony taken by plaintiff meet the case made by the answer. There is no attempt made to prove fraud directly, or to establish affirmatively any circumstances of suspicion,

and nothing calling upon the defendants to take proof. Indeed Kendall, and the Arlington Fire Insurance Company, against whom there were the same charges of fraud, made no proof, and Kendall did not *even make answer*, and yet their rights are recognized and protected by the decree.

The burden of proving fraud is upon the party alleging it, and if the fraud is not clearly and strictly proved as alleged, relief cannot be had, although the other party may not have been perfectly clear in his dealings. If the title to relief rests upon the fraud alleged in the bill, the bill will be dismissed if it is not proved as alleged, and circumstances of fraud must be clearly and conclusively proved. Circumstances of suspicion will not warrant a conclusion of fraud, and if the case made out is consistent with fair dealing, the charge of fraud fails.

Ker on Fraud, 382–4.
4 Pet., 259, Conard *vs.* Nicholl.
4 Mason, 324, Phettiplace *vs.* Sayles.
16 Wall., 16, Vorhees *vs.* Bonesteel.
22 Wallace, 329, Stephen *vs.* Beall.

A. G. RIDDLE,
FRANCIS MILLER,
*For Appellants.*

IN THE

# Supreme Court of the United States.

No. 189.—November Term, 1876.

GEORGE SEITZ AND MARY E. SEITZ,

*Appellants,*

vs.

JOHN T. MITCHELL.

## BRIEF OF APPELLEE.

PHILADELPHIA BAR ASSOCIATION

SAM'L L. PHILLIPS,

R. ROSS PERRY,

*Of Counsel.*

WASHINGTON:

JOSEPH L. PEARSON, PRINTER,

Corner of 9th and D streets.

1876.

IN THE

# Supreme Court of the United States.

No. 189.—November Term, 1876.

George Seitz and Mary E. Seitz,
*Appellants,*
*vs.*
John T. Mitchell.

Appeal from the Supreme Court of the District of Columbia.

## BRIEF OF APPELLEE.

### Statement of Case.

This is a judgment creditor's bill, filed November 6th, 1872, by Mitchell, surviving partner of the firm of Harper & Mitchell, against George Seitz and Mary E. Seitz, his wife, and certain other defendants whose rights are not affected by the decree passed in the cause. The bill alleges judgments obtained by the plaintiff against George Seitz in 1868, and existing in full force against him from that date down to the time of the filing of the said bill. It further alleges certain purchases of real estate, made nominally by Mary E. Seitz in 1870 and in 1872, and charges specifically that said real estate was purchased really by George Seitz, and was paid for with money belonging to him alone and not to his wife; and further, that the said real estate was conveyed to Mary E. Seitz with the fraudulent purpose of thereby hindering and delaying the plaintiff and other judgment creditors of the said George Seitz.

The prayer of the bill is for a sale of the property so fraudulently conveyed to the said Mary E. Seitz, and for the payment of the said judgments out of the proceeds thereof, and for general relief.

The answers of the defendants, George and Mary E. Seitz, deny all fraud, and allege that both pieces of property embraced in said bill were purchased and paid for with Mary E. Seitz's "own means and money—money *earned* and *procured* wholly by herself, and not from the said George, nor by or through him or his exertions." How it was earned and from whom it was procured does not appear. The other defendants also answered. General replications were filed by the plaintiff to all of said answers, and the testimony of record was taken. The defendants took no testimony, but relied upon their answers alone. On the hearing in the first instance before the chancellor (Wylie, Justice), a decree was entered in favor of the plaintiff; by express reservation the rights of other defendants than George and Mary E. Seitz were not affected. From this decree the defendants Seitz prayed an appeal to the court in general term. At the hearing upon this appeal the decree passed at special term by Justice Wylie was affirmed by a unanimous court.

From this decision an appeal was prayed by the said defendants to this court, and the cause now comes on to be heard upon this appeal.

POINTS.

I. It is to be noted that the appellees ~~are~~ and are content to rely upon a simple denial in their answers of the averments of the bill. The cardinal rule of equity pleading, that a defendant who submits to answer must answer fully, remains unmodified save in this: that he need not answer as to any matter from a discovery of which he might have protected himself by plea or demurrer.

Story's Equity Pleadings, § 847, note I.
Equity Rules Supreme Court U. S., No. 39.
" " D. C., No. 33.

II. Whatever might have been the opinion of the court as to the sufficiency of the answer, had it been excepted to, or as to its effect had the cause come on for hearing on bill and answer, it is submitted that after replication filed and proofs taken on the part of the plaintiff, it was incumbent on the defendants to rebut any evidence tending to establish the fraud charged against them, The bill charges fraud in a transaction peculiarly within the knowledge of the defendants; if the charge was false, who could have disproved it so readily as they? If the money in question was not the money of the defendant George Seitz, but that of his wife, what could have been more easy than for him and his wife to prove that it was acquired by her in some one of the ways provided by law in which a *feme covert* can acquire separate property? The answer in this respect is more than responsive to the bill. It may fairly be said to set up an independent defence, that the money which purchased the property was "money earned and procured wholly by herself." This defence is wholly unsupported by any attempt at proof. In the absence of such proof a mere reliance on the denial in the answer, in the terms of the bill itself, of the facts on which the alleged fraud rested, is suspicious. Such an answer is unsatisfactory, and the presumption is against it.

Callan vs. Statham, 23 Howard, 477.

III. Although fraud is not to be presumed, yet direct testimony is not required to establish its existence. Justice Grier thus declares the rule upon this subject in the case of Kempner vs. Churchill, 8 Wallace, 361: "It has been frequently held that fraud ought not to be presumed, but must be proved. But the evidence of it is almost always circumstantial. Nevertheless, though circumstantial, it produces conviction in the mind often of more force than direct testimony."

The following cases are referred to as illustrative of the

unanimity of the courts of different jurisdictions upon this point:

Davis vs. Calvert, 5 Gill & Johnson, 303.
Newman vs. Cordell, 43 Barbour, 449.
Bullock vs. Narratt, 49 Illinois, 62.
Floyd vs. Goodwin, 8 Yerger, 490.
Rogers vs. Hall, 4 Watts, 359.
McConiche vs. Sawyer, 12 N. Hamp., 396.
Land vs. Jeffries, 5 Randolph, 599.

IV. Where property is claimed by a *feme covert* as her separate estate, such property having been acquired subsequent to coverture, it is incumbent on her to show conclusively that it was not acquired by gift or conveyance from her husband, as against creditors of the husband who were such at the time the wife acquired the said property.

Gamber vs. Gamber, 6 Harris (Penn.), 363.

V. The evidence taken by the plaintiff has a two-fold aspect. It first meets the assertion of the defendants, that Mary E. Seitz earned the money in question, by shewing that she had no considerable sum of money when the property was first purchased, and that she did not and could not accumulate so large a sum by keeping a boarding-house, her only ostensible occupation. In the second place, it shows that the defendant George Seitz had a profitable trade, as a baker, from which he could have made this money, and that the payments were in fact made by him.

It appears from the testimony of Kendall (p. 8) that she had, at the time of the purchase, but $1,000, which was paid in cash; the deferred payments were made to stretch over a period of three years, and falling due at such periods and for such amount, ~~so~~ that a man in a prosperous business might fairly expect to meet them as they became due.

It appears from the testimony of the witnesses Watkin (p. 9), Bates and Bodeman (p. 10), and Jameson (p. 13), that Mrs. Seitz kept a small boarding-house, or rather took

boarders in her family, and that she had no other ostensible means of earning money. Her own family consisted of her husband, herself, three boys from ten to fifteen years of age, and one servant.

The average number of boarders from 1870 to 1872, inclusive, was four, who paid an average board of $100 per month. These boarders ate at the family table, which was supplied with provisions brought to the house in the husband's bakery-wagon. The marketing was not done by Mrs. Seitz. It is apparent from the evidence that she could not have made a profit of more than $10 per month, after deducting the necessary expenses of marketing, groceries, fuel, lights, and servant hire. The family all ate at one table, and no separate account could have been kept of the expenses of the boarders as distinct from those of the family proper. It was incumbent on defendants to have kept separate accounts. It is evident that the little money which Mrs. Seitz realized from her four boarders was devoted to the support of the family in order that as great a portion as possible of her husband's earnings might be applied to the payment of the purchase-money in question. It appears from the testimony of the witnesses Smith (p. 11) and Mitchell (p. 12) that the average expenses of marketing, groceries, fuel, lights, and servant hire, for such a household as that of Mrs. Seitz's, would not be less than $90 per month. Admitting that the family proper were supported by the husband, and that Mrs. Seitz applied the profits of her boarders to the payment of the purchase-money, it is still evident that these profits could not have been more than $25 or $30 per month. And yet, during the year 1870, Mr. Kendall was paid $1,600 of this purchase-money. In 1871 he was paid $1,200. In 1872 he was paid $3,600. Interest materially increased these sums. It cannot be necessary to consider further the claim that Mrs. Seitz bought this property with money earned by her.

If it be urged that Mrs. Seitz in her answer avers that she *procured* part of this money in addition to her earnings,

it may be answered that if she borrowed any part of it, and the word procured must mean borrowed in this connection, she could with ease have proved the alleged borrowing, when it was put in issue, as it directly was. It was not in the power of the plaintiff to conjecture a possible lender, to him unknown, and put him on the stand to disprove the defendants' averment of a loan. If it be urged that it does not appear from the record that Mrs. Seitz had not a separate estate, or that money might have been given to her to make these payments with, by some person other than her husband, it may be replied that her answer excludes any such claim; therein she distinctly avers that this money was "*earned* and *procured*" by herself, not that it was her separate estate or that it had been given to her.

The evidence is clear and decisive which connects George Seitz, the husband, with this transaction as the sole party in interest. Mr. Kendall, who sold the property, testifies (p. 8) that George Seitz first came to see him about the purchase; that he signed the notes and the deed of trust with his wife; that he was present when the purchase was made; that he came to ask for an extension of the last note. Mr. Kendall also testifies that Mrs. Seitz only made one payment of which he can be positive; that of $1,000 cash, made at the time of sale, and in the presence of her husband. The notes for the deferred payments were all paid at the Bank of Washington. About $400 were paid to Mr. Kendall in person by either George Seitz or his wife. Charles E. White, paying-teller of the Bank of Washington, testifies (p. 11) that all of the payments made at the bank were made by George Seitz in person; he further says, that if the payments made there were five in number, George Seitz in person made four of them, and that none of them was made by a woman. It also appears that George Seitz insured the property and paid the money.—(p. 9.)

It appears from the testimony of all the witnesses that George Seitz was a baker by trade, and that he had a bakery in active operation during the time covered by

these payments. Mr. Solomon, treasurer of the Provident Aid Society, testifies (p. 12) that George Seitz had contracts to furnish bread to that society during that period, and that bills were paid to him on those contracts.

A consideration of the dates and amounts of payments will corroborate the claim that these payments must have been made by Seitz from the profits of his business, and that it would have been impossible for Mrs. Seitz to earn such sums from her boarding-house.

| | |
|---|---|
| February 3d, 1870 | $1,000 |
| August 3d, 1870 | 600 |
| February 3d, 1871 | 600 |
| August 3d, 1871 | 600 |
| February 3d, 1872 | 600 |
| July 15th, 1872 | 1,500 |
| August 5th, 1872 | 400 |
| September 4th, 1872 | 200 |
| October, 1872 | 400 |
| November 6th, 1872 | 100 |
| December 5th, 1872 | 100 |
| December 21st, 1872 | 200 |
| January 7th, 1873 | 100 |
| | $6,400 |

It is submitted that there can be no doubt from the evidence that the purchase-money in question was earned and paid by George Seitz, and not by his wife.

VI. Admit that the property in question was purchased with "money earned and procured by the defendant Mary E. Seitz,"—that her earnings and such sums as she was able to borrow were invested by her in this manner. It is submitted that the decree was properly made, even when the defendants' answers are conceded to be true.

There can be no question that at common law the wife's earnings were the property of the husband, and that any contract made by her enured to his benefit.

Glover vs. Proprietors of Drury Lane, 18 C. L. R., 269.

How far are these common-law rights modified in the District of Columbia by the provisions of §§ 727–730 inclusive, of the Revised Statutes relating to the District of Columbia?

These sections are as follows:

§ 727. "In the District the right of any married woman to any property, personal or real, belonging to her at the time of marriage, or acquired during marriage in any other way than by gift or conveyance from her husband, shall be as absolute as if she were unmarried, and shall not be subject to the disposal of her husband, nor be liable for his debts.

§ 728. "Any married woman may convey, devise, and bequeath her property, or any interest therein, in the same manner and with like effect as if she were unmarried.

§ 729. "Any married woman may contract and sue and be sued in her own name in all matters having relation to her sole and separate property, in the same manner as if she were unmarried.

§ 730. "Neither the husband nor his property shall be bound by any such contract made by a married woman, nor liable for any recovery against her in any such suit; but judgment may be enforced by execution against her sole and separate estate in the same manner as if she were unmarried."

These statutory provisions received a limited construction from this court in the case of Sykes vs. Chadwick, 18 Wallace, 141. In this case it was decided that a woman's right of dower was a sufficient consideration to support a note made by a third person to her separate use, and that she could maintain an action at law against the maker of said note, it being her separate property within the meaning of the act. How far its provisions affected the common-law rights of the husband with respect to curtesy, the earnings of the wife and general contracts made by her, and how far it enabled her to contract,—these points were left untouched, and may, therefore, be said to be of first impression in this court. It would, however, be impertinent in counsel to argue concerning the proper construction of this

act, as if the question were one to be considered upon general grounds. Similar statutes exist in many of the states, and the decisions interpreting them with respect to the marital rights of the husband are so numerous and harmonious that upon authority there can be no doubt of the proper construction to be given to the law under consideration.

In the State of New York, a statute *in pari materia* was enacted in the year 1848, and an amendatory act was passed in the year 1849.

Laws of 1848, p. 307.
" 1849, " 528.

These statutes contain provisions which are almost identical in terms, and which are certainly identical in effect, with the sections quoted above. They have been interpreted by the courts of New York, as follows:

Their provisions do not remove the legal incapacity of married women to contract generally.

Yale vs. Dederer, 18 New York, 272.
Knapp vs. Smith, 27 " 279.

The husband is entitled to the profits of any business conducted by his wife, and is liable for articles bought with his knowledge and assent for the purpose of prosecuting it.

Switzer vs. Valentine, 4 Duer, 96.

The husband's right of curtesy is not destroyed by these acts; to defeat it the wife must, during her life-time, exercise her power of grant or devise.

Hurd vs. Cass, 9 Barbour, 366.

These acts have not affected that provision of the Revised Statutes (2 R. S., 4th ed., 259, § 29, 30) by which the husband is entitled to administer upon the wife's estate, and the assets, after the payment of debts, belong to him absolutely.

Shumway vs. Cooper, 16 Barbour, 556.

Where a married woman purchases property on her personal credit, the title becomes vested in her husband, and the property is liable to be taken in execution for his debts.

Glan vs. Younglove, 27 Barbour, 480.

The earnings of the wife are the absolute property of the husband, and this right is not affected by the Acts of 1848 and 1849.

Woodbeck vs. Havens, 42 Barbour, 66.

Subsequent to these decisions, the Legislature of New York passed an act wherein it was provided in express terms that the earnings of the wife should belong to her exclusively.

Laws of 1860, p. 157.

In the State of Pennsylvania, the statute upon this subject is even more broad and comprehensive in terms than that under consideration.

Laws of 1848, p. 536.

The Supreme Court of that state has held that the fact that real estate was paid for with the wife's earnings or savings does not give her a trust estate in the property; money thus acquired is not the property of the wife within the meaning of the act of 11th April, 1848, relating to the estate of married women, but is the property of the husband.

Raybold vs. Raybold, 8 Harris, 308.

In Massachusetts, it was found necessary to use express words to defeat the common-law rights of the husband to his wife's earnings.

Laws of 1855, ch. 305.

In Wisconsin, prior to 1872, the statute in force upon this subject was similar to those existing in this District.

2 Taylor's Statutes, p. 1195.

It has been repeatedly held by the courts of that state that the earnings of the wife belong to the husband, save in the special case provided for by §4 of the act.

Connors vs. Connors, 4 Wis., 131.
Elliott vs. Bentley, 17 Wis., 610.
Edson vs. Hayden, 20 Wis., 682.

The legislature in 1872 defeated this right by express words.

Laws of 1872, chap. 155., § 2.

In conclusion, it is submitted that the design and object of the statutes in force in this District are fully answered by allowing the wife to take and hold real and personal estate as a *feme sole* to her sole and separate use, and to convey the same by deed or dispose of it by a valid devise. And the rule of construction is a familiar one, that it is not to be presumed that the legislature intended to make any innovation upon the common law further than the case absolutely required.

1 Kent's Com., 464.

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